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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/332,863	06/15/1999	TERESITA VERGARA IMPERIAL	REV-99-10	3442

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NEW YORK, NY 10017

EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/332,863

Applicant(s)

IMPERIAL, TERESITA VERGARA

Examiner

Brian P Mruk

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-98 is/are pending in the application.
- 4a) Of the above claim(s) 69-97 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-68 and 98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 26, 2004 has been entered.
2. This Office action is in response to Applicant's amendment filed January 26, 2004. By amendment, applicant has amended claims 25, 27, 30, 32, 36-40, 42, 43, 49, 52, 54, 55, 57, 59, 60, 62, 64, 66 and 68. Claims 69-97 remain nonelected. Currently, claims 25-98 remain pending in the application.
3. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 13, 16, 21 and 25.
4. The rejection of claims 25-68 and 98 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, is withdrawn in view of applicant's amendments and remarks.

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 25, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkel, DE 2,624,690.

Henkel, DE 2,624,690, teaches a three part blonding mixture for hair (see abstract). The first part comprises an aqueous solution of a mixture of dyes, one of which is a cationic dye as claimed (Brilliant Blue R 28032) in the claimed amounts (see abstract and Example 1). The second part comprises a 6% aqueous solution of hydrogen peroxide, and the third part comprises solid (i.e. powdered) ammonium persulfate (see abstract and Example 1). Therefore, instant claims 25, 59 and 60 are anticipated by Henkel, DE 2,624,690.

7. Claims 25-47, 50-68 and 98 are rejected under 35 U.S.C. 102(a) as being anticipated by Goldwell, DE 19721785.

Goldwell, DE 19721785, exemplifies a three part composition for simultaneously coloring and brightening hair, see compositions A1, B1 and C on pages 13-16. In the Example, 6 grams of composition A1 is mixed with 6.25 grams of composition B1, 8.75 grams of composition C, and 20ml (20 grams) of water, see Example (a) on page 16. The final composition contains 0.64% by weight of azo and phenazine cationic dyes, 8.85% by weight inorganic persulfate (including potassium persulfate), 1.28% by weight hydrogen peroxide, and 2.92% by weight of the cationic surfactant/compound hydroxypropyl guar trimmonium chloride. Particularly, the first part, composition A1, is a colorant composition which comprises cationic dyes, a cationic surfactant, and a protein derivative (wheat protein hydrolyzate) as claimed in the claimed amounts, and humectants as claimed (PEG derivatives), see pages 13-14. The second part, composition B1, is powdered and comprises ammonium and potassium persulfate and particulate fillers (e.g. pyrogenic silica) in the claimed amounts, an inorganic colorant (magnesium oxide), and a paraffin oil, see pages 14-15. The magnesium peroxide may be present in the claimed inorganic colorant amounts, see page 11, lines 7-11. The third part, composition C, comprises hydrogen peroxide, water and an oily phase (cetyl stearyl alcohol) in the claimed amounts, see page 16. As explained above, the three compositions are mixed with 20ml of water, and is applied to the hair, followed by rinsing, see page 16. It is further taught by Goldwell that thickening agents, such as polyacrylic acid, are preferred in the composition, see page 5, lines 8-12, and that the composition may be applied as an emulsion, see page 13, lines 8-13. The examiner asserts that the persulfate compounds and filler compounds disclosed by Goldwell

Art Unit: 1751

would inherently meet the particle sizes claimed in instant claims 31 and 34, absent a showing otherwise. Therefore, instant claims 25-47, 50-68 and 98 are anticipated by Goldwell, DE 19721785.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 26-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkel, DE 2,624,690.

Henkel, DE 2,624,690, is relied upon supra as disclosing a three part blonding mixture for hair comprising a cationic dye, an aqueous solution of hydrogen peroxide and a persulfate. It is further taught by Henkel that the solid persulfate-containing composition may also contain 1-8% by weight of fillers, including those which read on the claimed inorganic colorants, see page 5, paragraph 2. Henkel teaches the equivalence between ammonium and sodium and potassium persulfate as claimed, wherein the persulfate may be present in the solid composition in an amount between 2-45% by weight, see page 5, first paragraph. The persulfate, developer and colorant compositions are mixed in the claimed amounts, and are applied to hair for the claimed times followed by rinsing, see Abstract and Example 1. The examiner asserts that the

Art Unit: 1751

persulfate compounds and filler compounds disclosed by Henkel would inherently meet the particle sizes claimed in instant claims 31 and 34, absent a showing otherwise.

Although Henkel generally teaches the inclusion of alkali metal persulfates and fillers in the hair treatment composition, the reference does not require these components with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a hair treatment composition which contained all of the components in the claimed amounts disclosed and taught by Henkel, including alkali metal persulfates and fillers, because such hair treatment compositions fall within the scope of those taught by Henkel. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a hair treatment composition containing these components is expressly suggested by the Henkel disclosure and therefore is an obvious formulation.

10. Claims 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldwell, DE 19721785, in view of Yoshihara, U.S. Patent No. 5,332,581.

The primary reference of Goldwell, DE 19721785, is relied upon above as teaching compositions and methods for coloring and highlighting the hair as claimed, wherein cationic direct dyes may be used as the colorants. The patentee does not appear to teach the addition of silicones to the colorant compositions as required by applicant in claims 48-49.

The secondary reference of Yoshihara, U.S. Patent No. 5,332,581, teaches keratinous fiber treating compositions which are preferably formulated as hair coloring compositions which contain direct dyes, wherein preferred direct dyes include cationic or basic direct dyes (see abstract, col. 3, lines 12-19 and col. 4, lines 3-11). Yoshihara teaches that silicones are preferably added to the compositions in the claimed amounts in order to improve the texture of the hair (see col. 4, line 64-col. 5, line 19).

Therefore, in view of the teachings of the secondary reference, one having ordinary skill in the art would be motivated to modify Goldwell by adding a silicone in the claimed amounts to the colorant compositions, because Yoshihara teaches that the addition of such silicones in the claimed amounts to hair colorant compositions, including those which may contain basic dyes, results in improved hair texture. Such modification would be obvious because one would expect that the use of a silicone component, as taught by Yoshihara, would be similarly useful and applicable to the analogous aqueous hair treatment composition taught by Goldwell.

Response to Arguments

11. Applicant's arguments with respect to claims 25-68 and 98 have been considered but are moot in view of the new ground(s) of rejection.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 1751

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk
April 15, 2004

Brian P. Mruk

Brian P. Mruk
Primary Examiner
Tech Center 1700